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19 AMERIS BANK d/b/a BALBOA CAPITAL CORPORATION

20 THE UNITED STATES DISTRICT COURT
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 AMERIS BANK, a Georgia state-
23 chartered banking corporation, doing
24 business as BALBOA CAPITAL
25 CORPORATION,

26 Plaintiff,

27 vs.

28 D&M TRUCK AND TIRE REPAIR
LLC, a Michigan limited liability
company; and JEREMY ONEIL, an
individual,

Defendants.

Case No.:

**PLAINTIFF AMERIS BANK D/B/A
BALBOA CAPITAL
CORPORATION'S COMPLAINT
FOR:**

- 1. BREACH OF EQUIPMENT
FINANCING AGREEMENT**
- 2. BREACH OF PERSONAL
GUARANTY**

1 Plaintiff Ameris Bank, a Georgia state-chartered banking corporation doing
2 business as Balboa Capital Corporation, (“Balboa” or “Plaintiff”), alleges as
3 follows:

4 **PARTIES AND JURISDICTION**

5 1. Plaintiff Ameris Bank d/b/a Balboa Capital Corporation (“Balboa” or
6 “Plaintiff”) is, and at all times relevant to this action was, a Georgia state-chartered
7 banking corporation with Balboa Capital Corporation as one of its divisions, which
8 division has its principal place of business in the State of California, County of
9 Orange.

10 2. Defendant D&M Truck and Tire Repair LLC (“D&M”) is, and at all
11 times relevant to this action was, a Michigan limited liability company with its
12 principal place of business in the County of Wayne, State of Michigan.

13 3. Defendant Jeremy Oneil (“Oneil”) (collectively with D&M,
14 “Defendants”), an individual, is, and at all times relevant to this action was, a
15 resident of the County of Wayne, State of Michigan and was an officer, member,
16 director, agent and/or owner of Defendant D&M. Based on information and belief,
17 including the Driver’s License submitted by Oneil to Balboa, Oneil is domiciled in
18 Detroit, Michigan 48204.

19 4. Plaintiff is informed and believes, and thereon alleges, that Defendant
20 D&M has one manager – Defendant Oneil – who is a citizen of the State of
21 Michigan. Thus, D&M is a citizen of the State of Michigan.

22 5. Plaintiff is informed and believes, and thereon alleges, that each
23 Defendant, directly or indirectly, or through agents or other persons, was engaged
24 with some or all of the other Defendants in a joint enterprise for profit, and bore
25 such other relationships to some or all of the other Defendants so as to be liable for
26 their conduct with respect to the matters alleged below. Plaintiff is informed and
27 believes and thereon alleges that each Defendant acted pursuant to and within the
28 scope of the relationships alleged above, that each Defendant knew or should have

1 known about the foregoing, and that each Defendant authorized, ratified, adopted,
2 approved, controlled, and aided and abetted the conduct of all other Defendants.

3 6. The obligations sued upon herein are commercial in nature and the
4 Complaint herein is not subject to the provisions of California Civil Code Sections
5 1801, *et seq.* (Unruh Retail Installment Sales Act) and/or California Civil Code
6 Sections 2981, *et seq.* (Rees-Levering Motor Vehicle Sales and Finance Act).

7 7. Pursuant to the Equipment Financing Agreement and Personal
8 Guaranty described herein, Defendants agreed those documents would be governed
9 by the laws of the State of California. In addition, the Equipment Financing
10 Agreement provides, in pertinent part, as follows:

11 **25. GENERAL. . . . THIS AGREEMENT SHALL BE**
12 **GOVERNED BY THE LAW OF THE STATE OF**
13 **CALIFORNIA. DEBTOR SUBMITS TO THE**
14 **JURISDICTION OF CALIFORNIA AND [sic] AGREE**
15 **THAT THE CALIFORNIA STATE COURTS OF**
16 **ORANGE COUNTY AND/OR THE UNITED STATES**
17 **DISTRICT COURT FOR THE CENTRAL DISTRICT OF**
18 **CALIFORNIA, SANTA ANA DIVISION, SHALL**
19 **HAVE EXCLUSIVE JURISDICTION OVER ANY**
20 **ACTION OR PROCEEDING TO ENFORCE THIS**
21 **AGREEMENT OR ANY ACTION OR PROCEEDING**
22 **ARISING OUT OF THIS AGREEMENT.**

23 8. Jurisdiction. This Court has jurisdiction over the case pursuant to 28
24 U.S.C. § 1332(a).

25 9. Specifically, as described above, Balboa is a citizen of the States of
26 Georgia and California; D&M is a citizen of the State of Michigan; and Oneil is a
27 citizen of the State of Michigan. As such, neither D&M nor Oneil is a citizen of
28 California or Georgia, and there exists complete diversity of citizenship between
Plaintiff and Defendants. Lastly, as alleged herein, the amount in controversy
exceeds \$75,000.

10 10. Venue. Venue is proper in this judicial district pursuant to 28 U.S.C. §
11 1391(b)(2) and in the Southern Division pursuant to 28 U.S.C. § 84(c)(3).

1 11. All officers of Balboa, including all witnesses, and all of Balboa's
2 documents are located in the State of California, County of Orange. The
3 transactions at issue in this Action occurred in the State of California, County of
4 Orange.

5 **FIRST CAUSE OF ACTION**

6 **(Breach of Equipment Financing Agreement)**

7 **(Against D&M)**

8 12. Balboa alleges and incorporates by reference each and every allegation
9 contained above, inclusive, as though each were fully set forth here.

10 13. Prior to January 2023, Balboa is informed and believes that D&M
11 initiated and engaged with BENLEE, Inc., located at 30383 Ecorse Road Romulus,
12 MI 48174 (the "Equipment Vendor"), in order to coordinate the acquisition and
13 financing of certain equipment (hereinafter referred to as the "Collateral") for its
14 business. The Equipment Vendor worked with D&M in the selection of the
15 Collateral and in coordinating its delivery.

16 14. Thereafter, Balboa is informed and believes, and therefore alleges, that
17 the Equipment Vendor initiated and coordinated submission of D&M's electronic
18 credit application to Balboa and other financial institutions. Upon review, D&M
19 concluded that Balboa offered agreeable terms to finance the Collateral
20 commensurate with its requirements. Thereafter, the Equipment Vendor
21 accumulated and submitted to Balboa the requisite signatories, documentation and
22 financial information from D&M to finance the Collateral being supplied by the
23 Equipment Vendor.

24 15. On or about January 19, 2023, D&M executed a certain written
25 Equipment Financing Agreement No. 434636-000 (the "EFA"), under the terms of
26 which Balboa loaned to D&M the sum of One Hundred Twenty-Five Thousand
27 Dollars and Zero Cents (\$125,000.00) in order to finance the Collateral for its
28 business. The EFA required D&M to make three (3) monthly payments of \$0.00

1 and fifty-seven (57) monthly payments of \$2,917.98, payable on the 1st day of each
2 month beginning March 1, 2023. A true and correct copy of the EFA is attached as
3 **Exhibit A** and is incorporated here by reference.

4 16. The last payment received by Balboa was credited toward the monthly
5 payment due for July 1, 2024. Therefore, on or about August 1, 2024, D&M
6 breached the EFA by failing to make the monthly payment due on that date.
7 Defendant D&M's failure to make timely payments is a default under the terms of
8 the EFA.

9 17. In accordance with the EFA, and as a proximate result of D&M's
10 default thereunder, Balboa declared the entire balance of the payments under the
11 EFA to be immediately due and payable to Balboa. Therefore, there became due
12 the sum of \$125,473.14. These amounts are exclusive of interest, attorneys' fees
13 and costs, no portion of which sum has been paid by D&M.

14 18. In addition, the terms of the EFA provide that D&M is liable to Balboa
15 for late charges and fees on all payments not made in a timely manner. As of the
16 date of the filing of Balboa's Complaint, late charges in the sum of \$683.52 are
17 now due and owing.

18 19. Balboa has performed all of the terms, conditions, and covenants
19 required to be performed by it under the terms of the EFA, except as excused or
20 prevented by the conduct of D&M.

21 20. As a proximate result of D&M's breach of the EFA, Balboa has been
22 damaged in the total sum of **\$126,156.67**, plus prejudgment interest from August 1,
23 2024, until the entry of judgment herein.

24 21. Further, under the terms of the EFA, D&M promised to pay all costs,
25 including reasonable attorneys' fees, incurred by Balboa in the enforcement of the
26 EFA. Therefore, Balboa requests the Court award Balboa its reasonable attorneys'
27 fees and costs as against D&M.
28

1 22. The EFA also provides Balboa the remedy of possession of the
2 Collateral and to obtain an order that Balboa may, in accordance with applicable
3 state law, sell the remaining the Collateral and apply the net proceeds from the sale
4 to the remaining loan balance. Alternatively, if possession cannot be had, Balboa is
5 entitled to recover the value of the Collateral.

6 **SECOND CAUSE OF ACTION**

7 **(Breach of Personal Guaranty)**

8 **(Against Oneil)**

9 23. Balboa alleges and incorporates by reference each and every allegation
10 contained above, inclusive, as though each were fully set forth here.

11 24. Concurrent with the execution of the EFA, and in order to induce
12 Balboa to enter into the EFA with D&M, Oneil guaranteed, in writing, the payment
13 of the then existing and future indebtedness due and owing to Balboa under the
14 terms of the EFA. A true and correct copy of the written Personal Guaranty signed
15 by Oneil (the “Guaranty”) is attached as **Exhibit B** and incorporated herein by
16 reference.

17 25. Balboa has performed all the terms, conditions, and covenants required
18 to be performed by Balboa under the terms of the Guaranty, except as excused or
19 prevented by the conduct of Oneil.

20 26. Following a default of D&M under the terms of the EFA, Balboa
21 demanded Oneil make the payments required under the EFA. Oneil failed to meet
22 the Guaranty obligations and make the payments required under the EFA.

23 27. Pursuant to the terms of the Guaranty, the sum of \$126,156.67, plus
24 prejudgment interest from August 1, 2024, is due and payable to Balboa from
25 Oneil. This Complaint, in addition to previous demands, shall constitute further
26 demand upon Oneil to pay the entire indebtedness due and owing from D&M to
27 Balboa under the terms of the EFA.
28

28. Under the terms of the Guaranty, Oneil promised to pay all costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement of the EFA and the Guaranty. Therefore, Balboa requests the Court award Balboa its reasonable attorneys' fees and costs as against Oneil.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Balboa prays for judgment against Defendants, and each of them, as follows:

On All Causes of Action:

1. The sum \$126,156.67;
2. Prejudgment interest from August 1, 2024 to the date of entry of judgment;
3. Late charges and non-sufficient charges in an amount to be proven at trial;
4. An order to recover possession of the Collateral which is the subject of the EFA, or if the Collateral cannot be delivered, for its reasonable value according to proof;
5. Reasonable attorneys' fees and costs;
6. Costs of suit as provided by law; and
7. Such other and further relief that the Court considers proper.

DATED: February 21, 2025

SALISIAN | LEE LLP

By: 

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Jared T. Densen

Attorneys for Plaintiff
AMERIS BANK d/b/a BALBOA CAPITAL
CORPORATION